

*vivian\_reese@ed.gov*. Requests may also be electronically mailed to the internet address *OCIO\_RIMG@ed.gov* or faxed to 202-708-9346. Please specify the complete title of the information collection when making your request.

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[FR Doc. 03-14726 Filed 6-10-03; 8:45 am]

BILLING CODE 4000-01-P

## DEPARTMENT OF EDUCATION

### Migrant Education Formula Grant Program

**AGENCY:** Office of Elementary and Secondary Education, Department of Education.

**ACTION:** Notice of interpretation.

**SUMMARY:** The Department announces interpretations of section 1303(a) and (b) of the Elementary and Secondary Education Act, as amended by the No Child Left Behind Act of 2001, under which the Department establishes rules for allocating Migrant Education Program funds to States, the District of Columbia, and the Commonwealth of Puerto Rico for Fiscal Year (FY) 2003.

**DATES:** Effective date: June 11, 2003.

**FOR FURTHER INFORMATION CONTACT:** James English, Office of Migrant Education, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3E315, FOB-6, Washington, DC 20202-6135. Telephone: (202) 260-1394, or via Internet: *james.english@ed.gov*.

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### SUPPLEMENTARY INFORMATION:

#### Background

The Migrant Education Program (MEP), authorized in Title I, Part C, of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001 (NCLB), is a State-operated

and State-administered formula grant program. It provides assistance to State educational agencies (SEAs) to support high-quality and comprehensive educational programs that provide migratory children appropriate educational and supportive services that address their special needs in a coordinated and efficient manner, and give migratory children the opportunity to meet the same challenging State academic content and student academic achievement standards that all children are expected to meet.

Through this notice, we clarify our interpretations of the formula for awarding FY 2003 MEP funds to States, including the District of Columbia and the Commonwealth of Puerto Rico (Puerto Rico). Under these interpretations, because the overall amount of MEP funds available for allocation to States (including the District of Columbia and Puerto Rico) in FY 2003 will be equal to the amount allocated in FY 2002, the MEP formula amounts to be awarded to each State (including the District of Columbia and Puerto Rico) for FY 2003 will be equal to the amounts awarded to each in FY 2002.

*The State Formula.* Section 1303(a) and (b) of the ESEA provides the statutory formula under which the Department awards MEP funds to States, including the District of Columbia and Puerto Rico. Section 1303(a)(1) provides a formula for the distribution of FY 2002 MEP funds to all States "other than the Commonwealth of Puerto Rico." This formula relies upon an estimate of the full-time-equivalent (FTE) number of migrant children in each State multiplied by "40 percent of the average per-pupil expenditure in the State, except that the amount determined under this paragraph shall not be less than 32 percent, nor more than 48 percent, of the average per-pupil expenditure in the United States."

Section 1303(a)(2) also stipulates that, except as provided under sections 1303(a)(2)(ii) and (b), the amount that each State "other than the Commonwealth of Puerto Rico" is entitled to receive in FY 2003 and subsequent years is the sum of—

1. The amount of MEP funds the State received for FY 2002, and
2. The amount (of those funds, if any, that may be appropriated for any subsequent fiscal year in excess of the FY 2002 appropriation level) determined by multiplying the sum of (i) the number of identified eligible migratory children, aged 3 through 21, who during the prior year resided in the State, and (ii) the number of such

children who received MEP services in a State summer or intersession program, by 40 percent of the average per-pupil expenditure in the State, except that the amount so determined may not be less than 32 percent, or more than 48 percent, of the average per-pupil expenditure in the United States.

For Puerto Rico, section 1303(b)(1) provides that each year the Commonwealth is entitled to receive an award in the amount "determined by multiplying the number of children who would be counted under subsection (a)(1)(A) if such subsection applied to the Commonwealth of Puerto Rico by the product of—

(A) the percentage that the average per-pupil expenditure in the Commonwealth of Puerto Rico is of the lowest average per-pupil expenditure of any of the 50 States; and

(B) 32 percent of the average per-pupil expenditure in the United States."

In addition, section 1303(b)(2) provides an increasing minimum percentage to be used in paragraph (b)(1)(A) for FYs 2002 through 2005 and succeeding years. This amount is 77.5 percent for FY 2002, 80 percent for FY 2003, 82.5 percent for FY 2004, and 85 percent for FYs 2005 and beyond.

Section 1303(b)(3) provides that, if application of paragraph (b)(2) for any fiscal year would cause any State to receive less than it received for the preceding fiscal year, the percentage described in paragraph (b)(1)(A) used for Puerto Rico's allocation for that fiscal year is to be the greater of the actual percentage in paragraph (b)(1)(A) for that fiscal year or the percentage used for the preceding fiscal year.

Finally, section 1303(c) of the ESEA requires the Department to ratably reduce MEP grant awards made to all States (including Puerto Rico) if "the amount appropriated for these grants is insufficient to pay in full the amounts for which all States are eligible."

*FY 2002 MEP Awards.* The amended ESEA established very clear procedures for determining the amount of FY 2002 MEP funds the Department provided to each State, including Puerto Rico. It required the Department to provide to all States (section 1303(b)(1)(A)) and to Puerto Rico (section 1303(b)(1)) an FY 2002 award derived by multiplying the total of the State's FTE count of migratory children by the appropriate per-pupil-expenditure amount identified in section 1303(a)(1)(B) and 1303(b)(1)(A) and (2), respectively. As the FY 2002 appropriation was insufficient to make awards to all States and Puerto Rico in these amounts, the Department then applied the ratable reduction provision in section